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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,877	09/27/2000	Randell L. Mills	62-231-1EL	4531

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MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/669,877

Applicant(s)

MILLS, RANDELL L.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 October 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-28, for reasons of record, are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. See paper no. 4, pages 2-3, and paper no. 8.

Claims 1-28, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 4, pages 3-7, and paper no. 8.

Applicant's arguments filed 25 October 2006 have been fully considered but they are not persuasive.

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Applicant argues (page 1) that he has submitted with his response “new, non-cumulative scientific evidence” in support of his theory. No new articles or attachments have been submitted since the Office action of paper no. 20060407, mailed 11 April 2006.

Applicant faults consultary examiner Dr. Bernard Souw (page 2) for drafting “numerous lengthy appendices totaling hundreds of pages”. Applicant himself has filed appendices totaling over 100 pages each.

Applicant argues (page 4), that the “Committee does not even mention, let alone consider, most of the certified experimental evidence” that he has submitted. Contrary to this assertion, the reasons that the evidence has not been persuasive were explained in the Office actions of paper nos. 20050109 and 20060407, and the Appendices attached thereto. Failure to be persuaded is not the same thing as a refusal to consider. Applicant alleges that the “Secret Committee” has dismissed his evidence (page 22), yet faults what he considers “erroneous arguments” in the Appendices of Dr. Souw (page 23), which themselves are a consideration of evidence submitted by applicant.

Applicant repeats his previous argument (pages 23-24) that the “Committee” has nitpicked on “theoretical grounds” and not found any “true fault with any of the data on legitimate scientific grounds”, which falsely assumes that theoretical grounds and scientific grounds are somehow mutually exclusive. The previous Appendices have given both theoretical and experimental reasons for finding fault with applicant’s data. For example, the Appendix by Dr. Souw in paper no. 20050504 is divided into “Experimental” and “Theoretical” parts.

Applicant argues (page 25) that “the level of support (or acceptance) in the scientific community, not the proper standard for ascertaining whether an applicant has satisfied the

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enablement or utility requirements of Sections 112 and 101. The level of support in scientific community is not alleged to be a standard under §101 and §112 *per se*, but merely a reason why the examiner does not consider applicant to have met the standards of these sections, such as enabling an ordinarily skilled artisan to make and use the invention. A disclosure is evaluated for what it teaches to those skilled in the art, such skill evaluated in light of the scientific knowledge pertinent to that art. The opinions of the scientific community form part of this background knowledge. As pointed out in paper no. 20050504, MPEP §2107.01 and §2107.02 show that inconsistency with known scientific principles and contemporary knowledge is a valid reason for a rejection for lack of utility.

Once again applicant faults the 'Committee' for relying on Krieg (page 28), doing so because the 'Committee' was 'feeling the pressure to back up its claims'. Krieg was not cited because of any 'pressure', but to address a specific argument raised by applicant, that the 'Committee' has failed to find any physical law the applicant has violated. Krieg makes four basic points. First, Krieg states that total energy, identified by the variable 'E', is the sum of kinetic and potential energy. Second, he uses the laws of electricity and magnetism to establish the potential energy of the proton-electron system. Third, he used the uncertainty principle to get an order of magnitude estimate for the momentum of an electron for a given orbit, which orbit is identified by its radius as 'r'. Fourth, he used calculus find the minimum value of 'E' by taking the derivative of 'E' and setting it equal to zero. Nowhere in applicant's arguments about Krieg are any of these points disputed.

Applicant argues (page 30) that in the Appendix to the Office action of 24 August 2004, Dr. Souw stated that '[t]he PTO's view is not at all that the existence of lower-energy hydrogen

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were [sic] impossible', which would mean that "lower energy states cannot be in violation of any physical law", and that the "Committee" has taken a contrary position, taking the "ground state of an electron of a hydrogen atom" to be a physical law that applicant has violated. This statement concerning the position of the "Committee" would contradict applicant's assertion (page 24), that the "Committee" has failed to identify any laws that have been violated. However, in stating Dr. Souw's position, applicant omits part of Dr. Souw's statement, where he states that "(a) Applicant's invention is not supported by any experimental fact or evidence, and (b) the underlying theory (i.e., GUT/CQM) fails to support the invention, because it contains too many flaws", the theory that Dr. Souw refers alleging the existence of lower-energy hydrogen. Since the theory behind lower-energy hydrogen is flawed (according to Dr. Souw), their existence is not supported, and the physical law concerning the "ground state" of hydrogen atoms remains accepted by the examiner.

Applicant argues (page 39) that an "APS News Online Bulletin, dated August/September 2002, suggests that Dr. [Robert] Park is maintaining his questionable PTO contacts, apparently with the agency's blessing', thus having knowledge of Patent applications filed during 2002, and not merely of applicant's applications at various times during the year 2000, and further states that the subject matter of such applications "is supposedly kept confidential". The Office has been publishing Patent applications under the Pre-Grant Publications program, as early as July 2001, over a year before the date of the above-mentioned APS News Online Bulletin. As before, instead of a 'Deep Throat' or other improper contact, the Bulletin was based on information that was publicly available.

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Applicant argues (pages 133-134) that the "Committee" contradicts itself in the statement in the Office action of 09 September 2005, in serial no. 09/362,693, and in the Advisory action of 12 December 2005, in 09/110,694, "which do not necessarily require the use of hydrinos, while applicant's invention (in the present application) deal with methods of making compounds that include hydrinos". Applicant takes this as an admission that the committee has "been forced to recognize the operability of BlackLight's novel hydrogen technology based on the required use of hydrinos to distinguish it from Dr. Souw's work". This statement was, and is, in no way whatsoever intended to be taken as an admission that the present examiner, or anyone consulted thereby, considers applicant's invention to be operable. The statement was only intended to show how Dr. Souw's work is seen as distinct from, and thus not conflicting with applicant's invention, without regard to its operability or patentability.

Applicant argues (pages 140 and 152) that Dr. Souw has relied on a fraud made by Dr. Andreas Rathke, where Dr. Rathke changes mathematical signs in applicant's equations (1) and (9). Since the articles which Dr. Rathke cites (nos. 24 and 25, on page 8 of his article) are not of record, whether Dr. Rathke has done what applicant alleges cannot be determined. However, it is noted that equation (1), on page 2 of the Rathke article appears identical to Equation (2) in applicant's attachment 58, except that applicant uses the coordinates "r", "theta" and "phi" within the parentheses, along with "t", whereas Rathke uses only "X" and "t". No signs, such as plus or minus, appear to have been changed.

Applicant argues (page 152-153) that the "Committee" provides no support for concluding, in the Final Office Action of 11 April 2006, that attachments 113 and 114 speculate hydrino formation as an explanation for data not necessarily caused thereby. The Appendix to paper no.

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20050504, on page 5 thereof, offers several different explanations alternative explanations for the Balmer line broadening observed by applicant, and thus support for the conclusion of the 'Committee'.

Applicant argues (page 154) that the data disclosed by Cvetanovic *et al.* supports his own 'resonance transfer model' of Balmer line broadening, because, for example, the data in figure 4 of Cvetanovic *et al.* shows that the broadening of the H α peak is 'independent of the orientation of observation relative to the field direction', data in such different directions shown in figures 4a, 4b, and 4c, which applicant contends are 'virtually identical'. However, the data points in figure 4c show a curve that varies from convex by more than those in figures 4a and 4b. The outer areas of the curve in figure 4c also rise up to around 200 a.u. farther away from the central peak than in figures 4a and 4b. These are a differences in shape, which cannot be accounted for by any difference in the scales of the figures.

This is a Request for Continued Examination of applicant's earlier Application No. 09/669,877. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN J. KALAFUT
EXAMINER
GROUP 1700